

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RICE

THIRD JUDICIAL DISTRICT

Daniel Ludwig,

Case Type: Personal Injury

Court File No.:

Judge:

Plaintiff,

v.

SUMMONS

Don Hummer Trucking Corporation, and
Joseph William Welch,

Defendants.

THIS SUMMONS IS DIRECTED TO DEFENDANT DON HUMMER TRUCKING CORPORATION, 505 33RD AVENUE SW, CEDAR RAPIDS, IOWA 52404, AND DEFENDANT JOSEPH WILLIAM WELCH, 1252 E. 17TH COURT, DES MOINES, IOWA 50316-2606:

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.
2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons a written response called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at:

SCHROEDER & MANDEL, P.A.
219 Little Canada Road E, Suite 200
St. Paul, Minnesota 55117

MCEWEN & KESTNER, PLLC
5854 Blackshire Path
Inver Grove Heights, Minnesota 55076

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.
4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the

EXHIBIT
A

Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond.

A default judgment can then be entered against you for the relief requested in the Complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.
6. **ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

SCHROEDER & MANDEL, P.A.

Dated: May 19, 2020

/s/ Richard J. Schroeder

Richard J. Schroeder, #231629
219 Little Canada Road E, Suite 200
St. Paul, Minnesota 55117
Telephone: (651) 426-8740
Facsimile: 877-822-3312
Email: rick@schroederandmandel.com

-and-

MCEWEN & KESTNER, PLLC

Dated: May 19, 2020

/s/ Peter J. Kestner

Peter J. Kestner, #0311662
5854 Blackshire Path
Inver Grove Heights, Minnesota 55076
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ATTORNEYS FOR PLAINTIFF
DANIEL LUDWIG

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RICE

THIRD JUDICIAL DISTRICT

Daniel Ludwig,

Case Type: Personal Injury

Court File No.:

Judge:

Plaintiff,

v.

COMPLAINT

Don Hummer Trucking Corporation, and
Joseph William Welch,

Defendants.

Plaintiff, Daniel Ludwig, for his Complaint against the above-named Defendants, states and alleges:

I.

The Plaintiff, Daniel Ludwig, at all times herein material resides at 1451 130th Street E, City of Dundas, State of Minnesota, 55019.

II.

That Defendant, Don Hummer Trucking Corporation (hereinafter, "Don Hummer Trucking") is an Iowa corporation with its principal place of business at 505 33rd Avenue SW, City of Cedar Rapids, County of Linn, State of Iowa, however, Defendant does business throughout the State of Minnesota, including Rice County.

III.

That Defendant, Joseph William Welch, whose current whereabouts are unknown, at all times material was last known to be residing at 1252 E. 17th Court, City of Des Moines, State of Iowa, 50316-2606.

IV.

On January 10, 2017, Plaintiff Daniel Ludwig was driving a 2006 STE snow plow truck, owned and maintained by the State of Minnesota – Department of Transportation, bearing Minnesota license plate number, ET6-078. Plaintiff was traveling northbound in the left lane on ISTH 35 in the City of Faribault, State of Minnesota.

V.

At the aforementioned date and place, Defendant Joseph William Welch, while in the course and scope of his employment with Defendant Don Hummer Trucking Corporation was operating a 2016 Kenworth T660 semi-tractor/trailer, bearing Iowa license plate number, SC2-559, which upon information and belief was also traveling northbound in the left lane on ISTH 35, in the City of Faribault, State of Minnesota. As Plaintiff Daniel Ludwig's snow plow truck was traveling northbound in the left lane on ISTH 35, the Defendant's semi-tractor trailer, also traveling northbound on ISTH 35, in the left lane at about the 57-mile marker, Defendant Joseph William Welch, suddenly and without warning, drove the semi-tractor trailer into the rear of Plaintiff Daniel Ludwig's snow plow truck. Following the impact, the snow plow truck Plaintiff Daniel Ludwig was operating came to a rest on the right shoulder, while the Defendant's semi-tractor trailer careened down into the left median/ditch. See Exh. A. *Minnesota Department of Public Safety – Motor Vehicle Crash Report*.

VI.

That Defendant Joseph William Welch was operating the semi-tractor trailer that was owned by Defendant Don Hummer Trucking with its permission and operating said semi-tractor/trailer in interstate commerce pursuant to operating rights granted to Defendant Don Hummer Trucking by the FMCSA, numbered 307512.

VII.

At said time and place, Defendant Joseph William Welch illegally, negligently, carelessly and unlawfully caused the semi-tractor he was operating, which was owned and maintained by Defendant Don Hummer Trucking, to collide with the rear of the snow plow truck in which the Plaintiff was operating. As a result, Defendant Joseph William Welch violated Minnesota law in one or more of the following ways:

1. By driving inattentively;
2. By driving while distracted;
3. By failing to keep a proper lookout;
4. By driving too fast for conditions;
5. By failing to keep his vehicle under control in his lane of travel;
6. By operating a vehicle in a careless manner as defined by Minn. Stat. §169.13, Subd. 2; and;
7. In many other ways which will be proven at the time of trial.

VIII.

As a direct and proximate result of the illegal, negligent, careless and unlawful conduct of Defendant Joseph William Welch, Plaintiff Daniel Ludwig sustained in excess of \$48,646.84 in reasonable and necessary medical treatment. Plaintiff continues to treat for his injuries; and according to some of Plaintiff's treating physicians, some of the Plaintiff's injuries are permanent in nature; Plaintiff has incurred lost earnings; and has in excess of 60 days disability, thus satisfying at least one of the tort thresholds as set forth in Minn. Stat. §65B, Subd. 3. Furthermore, Defendant Don Hummer Trucking is vicariously liable for the actions of its driver because the driver was dispatched by Defendant Don Hummer Trucking and operating an interstate commerce under Defendant Don Hummer Trucking's operating authority at the time of the collision.

IX.

As a direct and proximate result of the aforesaid illegal, negligent, careless and unlawful conduct of Defendant Joseph William Welch, Plaintiff Daniel Ludwig has incurred in the past and

will in the future incur expenses for reasonable and necessary medical care and treatment; has in the past and will in the future incur loss of earnings; and as a result, he has in the past and will in the future suffer physical pain and mental harm; and also he has ongoing past and will have future economic losses all to his detriment.

X.

At said time and place and upon information and belief, the Defendant Joseph William Welch was in the course and scope of his employment with Defendant Don Hummer Trucking. As such, pursuant to the doctrine of *respondeat superior*, Defendant Don Hummer Trucking is vicariously liable for the acts and conduct of its employee, Defendant Joseph William Welch. An employer is liable for the negligent act of its employee committed in the course and scope of employment when: (1) the conduct was to some degree in furtherance of the employer's interests; (2) the employee was authorized to perform the type of conduct; (3) the conduct occurred substantially within the employers authorized time and space restrictions; and (4) the employer should reasonably have foreseen the conduct. *Snilsberg v. Lake Washington Club*, 614 N.W.2d 738, 745 (Minn. Ct. App. 2000). Defendant Joseph William Welch's conduct clearly satisfies all four of the above factors.

XI.

In addition to the negligent, careless, illegal and unlawful conduct of Defendant Joseph William Welch, Defendant Don Hummer Trucking, upon information and belief, violated Minnesota law, or is causally negligent in one or more of the following ways:

1. By failing to properly screen, hire, train and/or supervise its employee drivers;
2. By failing to properly maintain and service its commercial vehicles in order to assure the public that they are safe and road-worthy;

3. By allowing its employees to operate its commercial vehicles with faulty equipment;
4. By failing to properly inspect its commercial vehicle before allowing its employee drivers to operate said commercial vehicle on Minnesota's roads and highways; and
5. In many other ways to be proven following discovery and at the time of trial.

XII.

On information and belief and investigation, Defendant Don Hummer Trucking's employee/driver, Defendant Joseph William Welch, had an extensive prior criminal history which included multiple driving violations, such as speeding, failing to secure a child, operating a vehicle without registration, as well as other criminal violations, including, but not limited to, possession of drug paraphernalia, possession of controlled substance, carrying weapons (knife over 5 inches), unlawful possession of prescription drugs, probation violations and supplying alcohol to underage persons. All of these motor vehicle and criminal violations were public record and for which Don Hummer Trucking knew, or should have known, at the time they considered hiring Defendant Joseph William Welch. Said motor vehicle and criminal violations go to the ability of a driver to safely operate a commercial motor vehicle.

XIII.

In addition, at said time and place, the semi-tractor trailer being driven by Defendant Joseph William Welch, was owned by Defendant Don Hummer Trucking. As a result, pursuant to Minn. Stat. §169.09, Defendant Don Hummer Trucking is also vicariously responsible for all of Plaintiff's injuries and damages caused by the operation of said semi-tractor trailer operated by Defendant Joseph William Welch.

XIV.

At said time and place of the motor vehicle collision with Defendant Joseph William Welch, Plaintiff Daniel Ludwig was in the course and scope of his employment with the Minnesota Department of Transportation, who is self-insured. Pursuant to Minnesota law, Plaintiff Daniel Ludwig's employer/insurer paid certain worker's compensation benefits. As such, pursuant to Minn. Stat. §176.061, Subd. 3 and 6, Plaintiff Daniel Ludwig's employer/insurer have a right of indemnity and therefore are subrogated to any recovery the Plaintiff Daniel Ludwig receives as a result of Defendants Don Hummer Trucking and Joseph William Welch's negligence.

WHEREFORE, Plaintiff Daniel Ludwig demands judgment, jointly and severally, against the Defendants Don Hummer Trucking Corporation and Joseph William Welch, in an amount in excess of Fifty Thousand and no/100 (\$50,000.00) Dollars together, along with costs, pre-judgment and post-judgment interest and disbursements as allowed by Minnesota law.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY.

SCHROEDER & MANDEL, P.A.

Dated: May 19, 2020

/s/ Richard J. Schroeder

Richard J. Schroeder, #231629
219 Little Canada Road E, Suite 200
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-and-

MCEWEN & KESTNER, PLLC

Dated: May 19, 2020

/s/ Peter J. Kestner

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ATTORNEYS FOR PLAINTIFF
DANIEL LUDWIG

ACKNOWLEDGEMENT

The undersigned acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. §549.211, Subd. 2, to the parties against whom the allegations in this pleading are asserted.

/s/ Richard J. Schroeder

Richard J. Schroeder, Esq.

/s/ Peter J. Kestner

Peter J. Kestner, Esq.

Report ID
17100175

ACN

170100223

Date

1/10/2017

Day of Week

TUESDAY

Agency

MN State Patrol District

2100 - Rochester

Time

11:09 AM

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
MOTOR VEHICLE CRASH REPORT

Vehicles

2

Injuries

0

Fatalities

0

County

Rice

City

Faribault

Hit And Run? ☐Report Amended? ☐Private Property Damage? ☐Public Property Damage? ☐

Id of Occurrence NB ISTH 35 MM 57

Latitude 44.29046372

Longitude -93.30881723

UNIT 1 DRIVER				UNIT 2 DRIVER			
Last Name WELCH		First JOSEPH		Last Name LUDWIG		First DANIEL	
Middle WILLIAM				Middle JOHN			
Address 1252 E 17TH CT				Address 1451 130TH ST E			
City DES MOINES		State IA		City DUNDAS		State MN	
County		Zip 50316		County		Zip 55019	
DOB 1/23/1988	Age 28	Driver's License No 546YY4365	Status Valid	DOB 8/7/1970	Age 46	Driver's License No Z816218921615	Status Valid
Class A Commercial		Phone No.		Class A Commercial		Phone No.	
DL State IA	Endorsement None	Restriction None		DL State MN	Endorsement M - Motorcycle, N - Tanker	Restriction None	
Jurisdiction State	Recommendations? None			Jurisdiction State	Recommendations? None		
Physical Conditions Apparently Normal (Including No Drugs/Alcohol)			<input checked="" type="checkbox"/> Address Correct	Physical Conditions Apparently Normal (Including No Drugs/Alcohol)			<input checked="" type="checkbox"/> Address Correct
			<input checked="" type="checkbox"/> Violations				<input type="checkbox"/> Violations
<input checked="" type="checkbox"/> CMV	Vehicle Year 2016	Vehicle Make KENWORTH	VIN 1XKYP9K3QJ124644	<input type="checkbox"/> CMV	Vehicle Year 2006	Vehicle Make STERLING	VIN 2FZA4WQA66AV67305
Vehicle Model T660	Vehicle Color RED			Vehicle Model STE	Vehicle Color ORANGE		
# of Passengers	Tag # SC2559	State IOWA	Plate County	# of Passengers	Tag # ET6076	State MINNESOTA	Plate County
Year Registered 2017	Parked Status			Year Registered 2017	Parked Status		
Insurance Co. SCOTTSDALE INS CO	Policy No LFO0002967			Insurance Co. SELF INSURED	Policy No 1048		
<input type="checkbox"/> Vehicle Fire	Towed Towed Due to Disabling Damage	Towing Company GLENN'S TOWING		<input type="checkbox"/> Vehicle Fire	Towed Not Towed	Towing Company	
<input checked="" type="checkbox"/> Pulling Unit				<input type="checkbox"/> Pulling Unit			
Point of Initial Contact FRONT	Most Harmful Event MOTOR VEHICLE IN TRANSPORT			Point of Initial Contact REAR	Most Harmful Event MOTOR VEHICLE IN TRANSPORT		
Vehicle Maneuver MOVING FORWARD	Sequence of Events MOTOR VEHICLE IN TRANSPORT			Vehicle Maneuver MOVING FORWARD	Sequence of Events MOTOR VEHICLE IN TRANSPORT		
Vehicle Type MEDIUM / HEAVY TRUCKS (MORE THAN 10,000 LBS)	RAN OFF ROADWAY LEFT			Vehicle Type OTHER			
Vehicle Use NORMAL	Vehicle Factors TOO FAST FOR CONDITIONS			Vehicle Use NORMAL	Vehicle Factors NO CLEAR CONTRIBUTING FACTOR		
Emergency Use				Emergency Use			
Contributing Factors DRIVER SPEEDING FOLLOWING TOO CLOSELY	Distracted Driving NOT DISTRACTED			Contributing Factors NO CLEAR CONTRIBUTING ACTION	Distracted Driving NOT DISTRACTED		
	Speeding TOO FAST FOR CONDITIONS				Speeding NOT SPEEDING		
Ped Maneuver	<input type="checkbox"/> Alcohol Suspected <input type="checkbox"/> Drug Suspected			Ped Maneuver	<input type="checkbox"/> Alcohol Suspected <input type="checkbox"/> Drug Suspected		
Tested No, Test Not Given	Type	Results		Tested No, Test Not Given	Type	Results	
Tested No, Test Not Given	Type	Results		Tested No, Test Not Given	Type	Results	
Direction of Travel NORTHBOUND	Alignment STRAIGHT	Roadway Grade UPHILL	70	Direction of Travel NORTHBOUND	Alignment STRAIGHT	Roadway Grade UPHILL	70
Traffic Design TWO WAY, GRADE SEPARATION	Traffic Ctrl Status	Traffic Ctrl NOT APPLICABLE	4	Traffic Design TWO WAY, GRADE SEPARATION	Traffic Ctrl Status	Traffic Ctrl NOT APPLICABLE	4
			Number of Lanes				Number of Lanes

Report By

TROOPER Erola, Brian

Badge #

101

Department

MSP/2100

Created Date

1/10/2017

Submitted By

1672

Checked By

Buck, Brian

Date Checked

1/10/2017

Unit 1

Carrier Name **DON HUMMER TRUCKING INC**
U.S. D.O.T. # **307512**

Address **1486 HWY 6 NW** City **OXFORD** State **IA** Zip **52322**

G.V.W.R **MORE THAN 26,000 LBS** Cargo Body Type **VAN/ENCLOSED BOX**

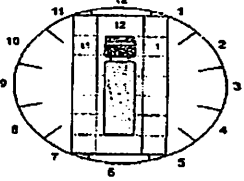
Vehicle Config.
TRUCK TRACTOR/SEMI-TRAILER

Carrier Type **INTERSTATE CARRIER** Bus Service Type

☐ Vehicle Placarded Hazardous HazMat Id HazMat Name Class #
☐ Material Released Inspection
☐ Waived

Inspection Number **MN00ZD000112** Inspector Badge Id # **1602**

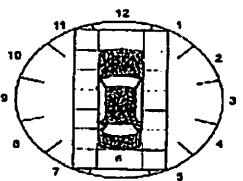
☐ Top
☐ Undercarriage
☐ All Areas
☐ Unknown



Extent of Damage
Severe - Disabling

Unit 2

☐ Top
☐ Undercarriage
☐ All Areas
☐ Unknown



Extent of Damage
Moderate - Functional

(Page 3 of 4)

VEH 1 NB Isth 35 IN THE LEFT LANE AT ABOUT THE 57 MILE MARKER AT ABOUT 55-60 MPH. DRIVER OF VEH 1 STATED HE COULD SEE THE FLASHING LIGHTS AHEAD OF HIM THE LEFT LANE. DRIVER STATED THERE WAS A LARGE CLOUD OF SNOW AND COULDN'T SEE THE VEH, SO HE SLOWED DOWN. VEH 1 STRUCK VEH 2 FROM BEHIND. VEH 1 DROVE DOWN INTO THE LEFT MEDIAN, AND VEH 2 CAME TO A REST ON THE RIGHT SHOULDER. HEAVY FRONT END DAMAGE TO VEH 1, AND DAMAGE TO THE REAR SANDER OF THE MNDOT PLOW. NO INJURIES REPORTED AT THE SCENE. VEH 1 TOWED FROM THE SCENE BY GLENN'S TOWING. WELCH CITED FOR FOLLOWING TOO CLOSE.

